

**IN THE UNITED STATES BANKRUPTCY COURT
Northern District of Iowa**

In the Matter of:

Misty M. Tucker

Debtor.

:
:
Case No. 16-01127
:
:
Chapter 13
:
:
:

**MOTION FOR CONTEMPT FOR VIOLATIONS OF THE AUTOMATIC
STAY & REQUEST FOR EXPEDITED HEARING**

COMES NOW the Debtor herein, by and through counsel, and requests that this Court hold Respondent, Heartland Power Cooperative (“Respondent”) in contempt of Court, assigning the following reasons therefore:

1. Debtor Misty M. Tucker (“Debtor”) filed a Chapter 13 bankruptcy petition on August 30, 2016. (See Docket Entry #1.)
2. Debtor’s counsel notified Respondent of the August 30, 2016 bankruptcy filing by listing its debt on Schedule E/F of the bankruptcy petition (see Exhibit “A”), and on the mailing matrix (see Exhibit “B”) whereby Respondent received notice.
3. Respondent filed a small claims action against co-debtor Roger Tucker on January 17, 2017 (see Exhibit “C”), and an order for judgment was entered on February 9, 2017 in Floyd County, Case No. SCSC016038, in violation of the co-debtor stay of 11 U.S.C. § 1301. Respondent is collecting on a debt that it knew was a joint debt between Misty and Roger Tucker, as its own invoice issued to the co-debtors listed both their names on the debt (see Exhibit “D”), at their joint address, providing service to a property they own jointly. Its action of suing only Roger Tucker and not Misty Tucker indicates that Heartland received notice of Misty’s bankruptcy and knowingly violated the co-debtor stay with its suit against Roger.

4. Respondent issued an execution against Mr. Tucker's wages on March 29, 2017 in violation of the co-debtor stay.

5. Debtor's counsel again notified Respondent of the Tucker bankruptcy filing on April 20, 2017 by calling Karrie Pringnitz and informing her of the co-debtor stay pursuant to 11 U.S.C. § 1301, and requested that the garnishment immediately cease.

6. The very next day, Respondent successfully garnished Mr. Tucker's pay checks in the amount of \$220.75. On April 28, 2017, \$217.99 was garnished from his pay.

7. Debtor's counsel notified Respondent of the co-debtor stay a third time by letter on May 4, 2017 (see Exhibit "E"). On May 5, 2017, \$220.76 was withheld from Mr. Tucker's pay, and on May 12, 2017, \$223.51 was withheld from his pay check.

8. Creditor, aware of the co-debtor stay and its own violation of it, responded not by stopping the garnishment, but by filing a Motion to Lift Stay on May 9, 2017 (Doc 46).

9. Eight (8) days have passed since the May 4, 2017 letter (the third warning), and Mr. Tucker's wages have been garnished two more times since that third warning. The judgment has not been set aside, the garnishment has not been terminated and the funds have not been returned to Mr. Tucker despite these three warnings.

10. Creditor has knowledge of the stay violation, as demonstrated by its action to file a Motion to Lift the Stay, but has done nothing to rectify the stay violation by refusing to stop the garnishment, return the garnished funds, or set aside the judgment, while Debtor faces foreclosure and a plan that cannot be funded due to lost wages of the household.

WHEREFORE, Debtor requests that the Court grant an expedited hearing due to the exigent circumstances in that the garnishment is frustrating the provisions of the Chapter 13 plan, including mortgage payments, car payments, and plan payments. Debtor seeks sanctions in an amount that will fairly compensate the Debtors for the financial harm that has been caused by

this garnishment in preventing them from making mortgage payments, plan payments, and car payments, and for the emotional distress that it has caused. In addition, the court must send a clear message to similarly-situated creditors of co-debtors that violation of the co-debtor stay will not be tolerated by the Court. The Debtor seeks sanctions in amount not less than \$9,500.00 plus attorney fees in the amount of \$950.00.

Respectfully submitted,

/s/ Kevin D. Ahrenholz
Kevin D. Ahrenholz AT0000438
For BEECHER, FIELD, WALKER,
MORRIS, HOFFMAN & JOHNSON, P.C.
620 Lafayette Street, Suite 300
Waterloo, IA 50704
PHONE: 319-234-1766
FACSIMILE: 319-234-1225
ATTORNEY FOR DEBTOR

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon the following persons indicated below:

Daniel M. McDermott, US Trustee
United States Federal Courthouse
111 7th Avenue SE, Box 17
Cedar Rapids, IA 52401-2101

Heartland Power Cooperative
Attn: Karrie Pringnitz
P.O. Box 70
St. Ansgar, IA 50472-0070

David J. Hellstern
6601 Westown Parkway, Suite 200
West Des Moines, IA 50266
Attorney for Heartland Power Cooperative

Carol F. Dunbar, Trustee
531 Commercial St., Suite 500
Waterloo, IA 50703

Roger & Misty Tucker
1419 Rampart Ave
Charles City, IA 50616

by ECF or by enclosing the same in an envelope with postage fully paid, and by depositing said envelope in a United States Postal Service depository in Waterloo, Iowa. I declare under penalty of perjury that the foregoing is true and correct.

Dated this 12th day of May, 2017.

/s/ Haley Close

Debtor 1 **Misty M. Tucker**

Case number (if know)

4.4 First Premier Nonpriority Creditor's Name 3820 N. Louise Ave Sioux Falls, SD 57104-0145 Number Street City State Zip Code Who incurred the debt? Check one. <input checked="" type="checkbox"/> Debtor 1 only <input type="checkbox"/> Debtor 2 only <input type="checkbox"/> Debtor 1 and Debtor 2 only <input type="checkbox"/> At least one of the debtors and another <input type="checkbox"/> Check if this claim is for a community debt Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	Last 4 digits of account number XXXX \$450.00 When was the debt incurred? 2012 As of the date you file, the claim is: Check all that apply <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Type of NONPRIORITY unsecured claim: <input type="checkbox"/> Student loans <input type="checkbox"/> Obligations arising out of a separation agreement or divorce that you did not report as priority claims <input type="checkbox"/> Debts to pension or profit-sharing plans, and other similar debts <input checked="" type="checkbox"/> Other. Specify Revolving account
--	---

4.5 H & R Accounts Inc. Nonpriority Creditor's Name 7017 John Deere Parkway PO Box 672 Moline, IL 61265 Number Street City State Zip Code Who incurred the debt? Check one. <input checked="" type="checkbox"/> Debtor 1 only <input type="checkbox"/> Debtor 2 only <input type="checkbox"/> Debtor 1 and Debtor 2 only <input type="checkbox"/> At least one of the debtors and another <input type="checkbox"/> Check if this claim is for a community debt Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	Last 4 digits of account number Several accounts \$197.00 When was the debt incurred? 2016 As of the date you file, the claim is: Check all that apply <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Type of NONPRIORITY unsecured claim: <input type="checkbox"/> Student loans <input type="checkbox"/> Obligations arising out of a separation agreement or divorce that you did not report as priority claims <input type="checkbox"/> Debts to pension or profit-sharing plans, and other similar debts <input checked="" type="checkbox"/> Other. Specify Third party creditor
--	--

4.6 Heartland Power Cooperative Nonpriority Creditor's Name 605 E 4th St P.O. Box 70 Saint Ansgar, IA 50472-0070 Number Street City State Zip Code Who incurred the debt? Check one. <input type="checkbox"/> Debtor 1 only <input type="checkbox"/> Debtor 2 only <input type="checkbox"/> Debtor 1 and Debtor 2 only <input checked="" type="checkbox"/> At least one of the debtors and another <input type="checkbox"/> Check if this claim is for a community debt Is the claim subject to offset? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes	Last 4 digits of account number 3602 \$2,561.34 When was the debt incurred? 2016 As of the date you file, the claim is: Check all that apply <input type="checkbox"/> Contingent <input type="checkbox"/> Unliquidated <input type="checkbox"/> Disputed Type of NONPRIORITY unsecured claim: <input type="checkbox"/> Student loans <input type="checkbox"/> Obligations arising out of a separation agreement or divorce that you did not report as priority claims <input type="checkbox"/> Debts to pension or profit-sharing plans, and other similar debts <input checked="" type="checkbox"/> Other. Specify Utilities
---	---

Heartland Power Cooperative
605 E 4th St
P.O. Box 70
Saint Ansgar, IA 50472-0070

Kohl's / Capital One
P.O. Box 3115
Milwaukee, WI 53201-3115

Lanny Mincks
903 Owen St
Charles City, IA 50616

Mercy Hospital
Payment Processing Center
PO Box 5435
Carol Stream, IL 60197-5435

Midland Credit Management, Inc.
8875 Aero Dr.
San Diego, CA 92123

Portfolio Recovery
120 Corporate Blvd.
Ste 100
Norfolk, VA 23502

The CBE Group Inc.
131 Tower Park Dr.
P.O. Box 900
Waterloo, IA 50704

University of Iowa Hospitals & Clinics
2100 University Capitol Centre
Iowa City, IA 52242-5500

EXHIBIT

B



eForm 3.1: Original Notice and Petition for a Money Judgment

In the Iowa District Court for Floyd County

Plaintiff(s)

Heartland Power Cooperative

(Name)

PO Box 70, St. Ansgar, IA 50472-0070

(Address)

(Name)

(Address)

vs.

Defendant(s)

Roger J Tucker

(Name)

1419 Rampart Ave, Charles City, IA 50616

(Address)

(Name)

(Address)

**Original Notice and Petition
for a Money Judgment**

To Defendant(s):

1. **You are notified** that Plaintiff(s) demand(s) from you the amount of \$ 2755.17 plus court costs based on (state briefly the basis for the demand, not to exceed \$5000):

Non payment of electric utilities at location 11V179 (1419 Rampart Ave, Charles City, IA 50616)

2. **Judgment may be entered against you unless** you file an Appearance and Answer within **20 days** of the service of the Original Notice upon you. Judgment may include the amount requested plus interest and court costs.

3. You must electronically file the Appearance and Answer using the Iowa Judicial Branch Electronic Document Management System (EDMS) at <https://www.iowacourts.state.ia.us/EFile>, unless you obtain from the court an exemption from electronic filing requirements.

4. If your Appearance and Answer is filed within **20 days** and you deny the claim, you will receive electronic notification through EDMS of the place and time of the hearing on this matter.

5. If you electronically file, EDMS will serve a copy of the Appearance and Answer on Plaintiff(s) or on the attorney(s) for Plaintiff(s). The Notice of Electronic Filing will indicate if Plaintiff(s) is (are) exempt from electronic filing, and if you must mail a copy of your Appearance and Answer to Plaintiff(s).

6. You must also notify the clerk's office of any address change.

/s/ Brenda Anderson

Filing Plaintiff or Attorney

Heartland Power Cooperative

Law firm, or entity for which filing is made, if applicable

/s/

Second Plaintiff, if applicable

Law firm, or entity for which filing is made, if applicable

PO Box 70, St. Ansgar, IA 50472-0070

Mailing address

641 713 4965

Telephone number

banders@heartlandpower.com

Email address

srac@heartlandpower.com

Additional email address, if applicable

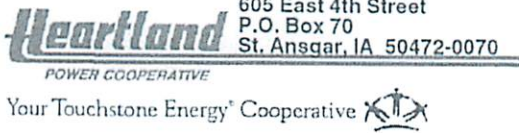
Mailing address

Telephone number

Email address

Additional email address, if applicable

1003653602 // 1



Map Location 11V179
 Service Desc. 1419 RAMPART AVE
 Previous Bill Amount 2925.56
 Payment Received -740.00
 Adjustment(s) 32.78
 Balance Forward 2218.34

Current Charges 08/03/2016 343.00

Amount Due 2561.34

Past Due After 08/23/2016 Pay 2599.75

Page#: 1 of 1

Thompson Office: Telephone: 641-584-2251
 Toll Free: 888-584-9732
 St. Ansgar Office: Telephone: 641-713-4965
 Toll Free: 800-349-2832

7:00 A.M. to 3:30 P.M. Monday - Friday

ROGER J TUCKER
 MISTY M TUCKER
 1419 RAMPART AVE
 CHARLES CITY IA 50616-9069

1 17



ACCOUNT #: 1003653602

THE SUMMER RATES ARE IN EFFECT FOR JUNE, JULY & AUGUST USAGE

***YOUR ACCOUNT SHOWS A BALANCE FORWARD OF \$2218.34.
 ***IF YOUR RECORDS DIFFER, PLEASE CONTACT OUR OFFICE.
 ***IF THE BALANCE FORWARD HAS NOT BEEN PAID, IT MUST
 ***BE PAID BY 08/15/2016 TO AVOID DISCONNECT.

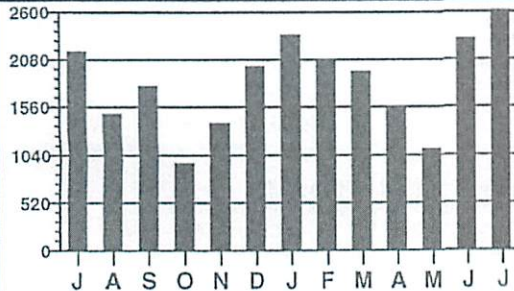
REGULAR

1 PHASE RATE METER 32628
 NEW READING 07/31/16 7105
 PRIOR READING 06/30/16 6975
 USAGE MULTIPLIER 20 2600
 FACILITY CHARGE 35.00
 BALANCE KWH@ \$.116000 2600 301.60
 SECURITY LIGHT MAINT 3.00

KWH USAGE HISTORY

Current Month's
 Average KWH
 Per Day
 84

Average Cost
 Per Day
 10.95



TOTAL ELECTRIC CHARGES 339.60
 COUNTY SALES TAX 3.40
 CURRENT CHARGES 343.00

Return This Portion With Your Payment

Page#: 1 of 1

Please do not staple.

ROGER J TUCKER
 MISTY M TUCKER
 1419 RAMPART AVE
 CHARLES CITY IA 50616-0000

Account	Past Due After	With Penalty	Amount Due
1003653602	08/23/2016	2599.75	2561.34

Due by 8-20-16

760.00

Please make payable to:

HEARTLAND POWER COOPERATIVE*
 P. O. BOX 240
 MASON CITY IA 50402-0240



EXHIBIT

D

17098100365360200025613400025997

BEECHER, FIELD, WALKER, MORRIS, HOFFMAN & JOHNSON, P.C.

HUGH M. FIELD
JOHN R. WALKER, JR.
RICHARD R. MORRIS
THERESA E. HOFFMAN
ERIC W. JOHNSON
KEVIN D. AHRENHOLZ
D. RAYMOND WALTON
JOHN J. WOOD
ADNAN MAHMUTAGIC
THOMAS C. VERHULST

LAWYERS
COURT SQUARE BUILDING – SUITE 300
P.O. BOX 178
WATERLOO, IA 50704-0178

TELEPHONE: (319) 234-1766
FACSIMILE: (319) 234-1225

www.IowaChapter7.com

KATE B. MITCHELL
NATHAN D. MILLER
JORDAN M. TALSMA

OFFICE LOCATIONS:
Cedar Rapids
Des Moines
Mason City

May 3, 2017

Heartland Power Cooperative
Attn: Karrie Pringnitz
P.O. Box 70
St. Ansgar, IA 50472-0070

RE: Roger & Misty Tucker
Bankruptcy Case No. 16-01127
Floyd County Case No. SCSC016038

Dear Ms. Pringnitz:

As you know, Misty Tucker filed bankruptcy on August 20, 2016, Case No. 16-01127. Your company was provided notice of that bankruptcy, and Roger Tucker was listed as a co-debtor on that debt. As a Chapter 13 case, your debt is being treated in the plan, and the co-debtor stay of 11 U.S.C. § 1301 protects Mr. Tucker from any collection efforts on the part of creditors on any debts where he is a joint co-debtor with Misty that are covered under the Chapter 13 bankruptcy plan. The debt of Heartland Power Cooperative sits squarely within the protections afforded to Mr. Tucker under this co-debtor stay.

I contacted you by telephone on April 20, 2017 to inform you of this, and I asked you to consult with your attorney, and that you immediately stop the garnishment that you levied against Mr. Tucker.

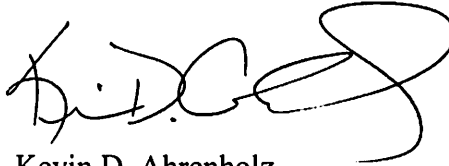
It has come to my attention that the garnishment has not stopped despite the two notifications that you have now received. You leave me with no choice but to ask for intervention of the court to seek sanctions against your company for its blatant disregard of my clients' legal rights. I will be asking for sanctions and attorney fees in an amount that will send a sufficient message to other creditors who might be so inclined to violate the co-debtor stay. Mr. Tucker has now been deprived of large portions of two pay checks which is making it impossible for Misty Tucker to make secured debt payments, and make Chapter 13 plan payments, which is having the result of frustrating the plan that she has with the court. In addition to sanctions and attorney fees, we will be seeking damages for the harm you have caused the Tuckers, placing them on the brink of foreclosure and repossession.

EXHIBIT

E

My suggestion to avoid that result is to issue a check to the Tuckers immediately to compensate them for the amount that has been garnished, which amounts to \$438.74 as of the date of this letter, plus \$500.00 in attorney fees, and that you immediately stop the garnishment. I will be filing my motion to request sanctions within the next couple of days.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'K. D. Ahrenholz', with a large, stylized flourish at the end.

Kevin D. Ahrenholz
For BEECHER, FIELD, WALKER,
MORRIS, HOFFMAN & JOHNSON, P.C.

KDA:hfc